

Is it specific enough to set a process?

Mallatt v. Ostrander Ry & Timber Co.

46 F. Supp. 250 D.C., D. Ore (1942) Yankwich, D.J.

OGC Has Reviewed

Violations of Oregon Logging Safety Code -
negligence charged for ↑

Can it be said that law which leaves to jury determination of questions of negligence and question as to whether clause is vague and lays down no definite standard of care or duty turns jurors into legislators or amounts to a denial of due process? "Constantly, then our law, jurors have been made judges of facts upon the determination of which liability or non-liability depended. 314 US 513, 523".

"The law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here, he may incur the penalty of death." Holmes in Nash v. US, 1913, 229 US 375, 377.

"And statutes which have left the determination of the reasonableness or practicability of an action to a jury are not only invulnerable from a constitutional standpoint, but are in the very spirit of the jury system..... Tests of this character are not metaphysical, subjective or abstract. They are practical, objective and concrete. The standard they establish is as certain as it is pragmatic. They allow a jury to determine whether, in the light of past conduct a person's actions meet the standard of reasonableness, practicability or the like... Gorin. - 253-254

Is it specific enough to satisfy the requirements of due process?

Fundamental constitutional protection that a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. Statute which forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the constitutional guarantees of due process of law.

255 US 81; 269 US 385; 306 US 461.